IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Civil Revision No.104/2000

Judgment Reserved on 26.7.2006.

Date of Decision :17th August,2006..

Susheela Verma and others. …Petitioners.

Versus:

Sh.Gopal Mandi Sabha. …Respondent.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] Yes

For the petitioners: Mr.Bhupinder Gupta, Senior. Advocate with Ms. Charu Gupta, Advocate.

For Respondent. Mr.G.D.Verma, Sr.Advocate with Mr.B.C.Verma, Advocate.

Deepak Gupta, J.

The present revision petition under Sections 24(5) of the H.P. Urban Rent Control Act (hereinafter referred to as `the Act') is directed against the order passed by the appellate authority dated 1.4.2000 whereby the appellate authority has allowed the appeal of the landlord and set aside the order of the Rent Controller (I), Shimla dated 26.9.1998 and ordered the eviction of the tenant on the ground of non-payment of rent and the original tenant having been allotted accommodation reasonably sufficient for his requirement.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

2. It would be pertinent to point out that Shri Bhupinder Gupta learned senior counsel appearing on behalf of petitioners submits that he does not challenge the finding of the appellate authority with regard to the finding on the issue of non-payment of rent and his challenge is limited to two grounds, firstly, that the eviction petition has not been properly instituted nor it had been filed through a competent person and secondly that the landlord has failed to prove that the tenant had been allotted Government accommodation which is reasonably sufficient for his requirement.

3. The brief facts are that `Shri Gopal Mandir Sabha' filed an eviction petition against the original tenant Shri Swamy Deen in the Court of Rent Controller, Shimla. In the petition, it was alleged that the tenant was in occupation of the residential premises consisting of two living rooms, one kitchen, one bath room and one latrine at monthly rent of Rs.135/- excluding taxes, water and electricity charges. According to the landlord the respondent was in arrears of rent from 1st May, 1988 and the other allegation was that the respondent had been allotted Government accommodation of Type-IV in Kaithu which accommodation was reasonably sufficient for his use. However, the tenant had not occupied the same due to ulterior motive and hence eviction was sought.

4. The tenant contested the petition and one of the grounds taken was that the petition had not been properly filed and the President had no authority to file the petition. It was admitted that `Shri Gopal Mandir Sabha (Regd.)' was the landlord but it was denied that Shri D.Paul had any right to file the petition. With regard to the plea of allotment of

Government accommodation, the stand of the tenant was that the premises had never been allotted to him nor it was reasonably sufficient for his requirement. According to the tenant he had not received any letter of allotment in this regard. On the pleadings of the parties, the trial Court framed the following issues:

1. Whether the respondent is in arrears of rent, if so to what extent?
….OPP.

2. Whether the respondent has been allotted Govt. accommodation, if to what extent?
….OPP.

3. Whether the petition is not maintainable?
…OPR.

4. Whether the petition is not properly verified, if so its effect?
…OPR.

5. Whether the petitioner lacks better particulars?
…OPR.

6. Relief.

5. Though the Rent Controller found that the tenant was in arrears of rent and also found that the tenant had been allotted Government accommodation, he dismissed the petition on the ground that the same was not maintainable since it had not been shown as to how the same has been filed by Shri D.Paul or Shri V.K.Sood. The landlord filed an appeal before the appellate authority. In the meantime Sh. Swami Deen the original tenant died and his heirs filed cross objections challenging the finding of the Rent Controller. The learned appellate authority accepted the appeal of the landlord, rejected the cross objections of the tenant and passed the eviction order. Hence the present appeal.

6. I have heard Shri Bhupinder Gupta, learned senior counsel for the petitioners-tenants and Shri G.D.Verma, learned senior counsel for the respondent-landlord and gone through the entire record. Two issues arise for decision in the present revision petition:

(i) Whether the eviction petition filed was maintainable and

(ii) Whether the tenant had been allotted Government accommodation sufficient to meet his requirement?

7. So far as first issue is concerned, Shri Bhupinder Gupta urges that the learned appellate authority has built up a case for the landlord which was not set up by it. The landlord in the eviction petition has been described as 'Shri Gopal Mandir Sabha (Regd.)', Shimla through its President Shri D.Paul. In the amended petition, the same description has been given but the amended petition has been filed through Secretary Shri V.K.Sood. There is neither any pleading nor any evidence to show under which Act the landlord-society is registered. It would be pertinent to mention that the learned appellate authority has held that though there is no specific allegation or evidence as to whether that the landlord is registered as a Co-operative Society but it can be legitimately presumed that it being a Sabha (Society) it might be registered under the Co-operative Societies Act. I am afraid that no such presumption could have been raised by the learned appellate authority. A Society can be registered under various Acts. It can be registered under the H.P. Co-operative Societies Act or even under the Societies Registration Act. How the appellate authority came to the conclusion that the petitioner landlord

must have been registered under the H.P. Co-operative Societies Act is beyond my comprehension. In fact, there is no proof that the petitioner-society is registered under any particular Act. It was for the landlord to have pleaded and proved that it was registered under a particular provision of law. There is, in fact, no material on record to show that the petitioner-society is a juristic person entitled to file the present petition.

8. The learned appellate authority has also held that an un-amended petition was filed through the President and the amended petition was filed through the Secretary and they being the Principal Officers are entitled to file or sign the pleadings on behalf of the Society under Order XXIX C.P.C. Even if this provision of law is held to be applicable then also Order XXIX only permits the signing and verification of the pleadings by the Principal Officer. The right to file a suit on behalf of the Corporation does not flow from Order XXIX but has to flow from some documents executed by the Corporation. A reference in this behalf may be made to the judgment of the Delhi High Court reported in **M/s Nibro Limited Vs. Insurance Co. Ltd.,** AIR 1991 Delhi 25, wherein the Court held as follows:

> "Order 29, Rule 1 of Civil Procedure Code does not authorize persons mentioned therein to institute suits on behalf of the Corporation. It only authorizes them to sign and verify the pleadings on behalf of the corporation. It is well settled that under S.291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to

> be exercised by the company in general meeting—in all other cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles.
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> Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be passing a resolution in that regard."

9. I am in respectful agreement with this view. There is no material on record to show how Shri D.Paul or Shri V.K.Sood were authorized to file the present petition. In the case of the Society, there must be a resolution of the Society or the Managing Committee of the Society authorizing a person to file legal proceedings. Even the Byelaws of the Society may provide who can institute the suit on behalf of the Society. These must be placed on record and cannot be presumed to be there.

10. Shri G.D.Verma relies upon the judgment of the apex court in **Bal Niketan Nursery School Vs. Kesari Prasad,** AIR 1987 Supreme Court 1970 and contends that keeping in view the principle enunciated in that case the society can be added as a party in the suit. In the case before the apex Court, there was a school being run by the society. Some tenants were occupying some of the superstructures belonging to the school. The school though being run by the society was also a registered institution being registered under the U.P. Basic Education Act and to that extent the

school was clothed with legal status. The apex Court held that the school was not a nonentity in the eyes of law. Further, no objection with regard to the maintainability of the suit had been taken at the initial stage. It was held that the High Court was in error in accepting the belated objection taken by the tenants regarding the competence of the school to file the suit. In my opinion, this judgment does not apply in the present case. The objection of maintainability was taken at the initial stage. Despite such objections being taken, no effort was made to prove that the petitioner is a juristic person and if so under which provision of law. No evidence was led to prove how Shri D.Paul or Shri V.K.Sood were authorized to file the petition.

11. The apex Court in **Chief Conservator of Forests Govt. of A.P. Vs. Collector and others**, AIR 2003 Supreme Court 1805 has made some pertinent observations in this regard which are as follows:

> "11. It needs to be noted here that a legal entity—a natural person or an artificial person—can sue or be sued in his/its own name in a court of law or a Tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerably significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to

remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the Court may at any stage of the suit/proceedings permit correction of the cause title so that party before the Court is correctly described; however a misdescription of a party will not be fatal to the maintainability of the suit/proceedings"

12. It has been argued that the petition should not be dismissed on the technical ground and if there is any fault, the same can be removed by adding the proper party. This argument, addressed by Shri G.D.Verma, has no legal basis to it. Order 1 Rule 10 permits the Court to strike or add party at any stage of the proceedings. However, the present case is not one where the parties have not been properly arrayed in the petition. The description of the parties is proper. However, no material has been shown that the petitioner landlord is a juristic person or that the officers were authorized to file the petition on behalf of the petitioner.

13. Even if for the sake of arguments it is accepted that the petition is properly instituted then also in my opinion the finding of the learned appellate authority that the tenant is liable to be evicted on the ground that he had been allotted Government accommodation cannot be justified in the facts of the present case. It would be apposite to quote the relevant provision of law on the basis of which the eviction of the tenant can be sought on this ground. Section 14(3)(iv) of the Act reads as follows:

> "(iv) the tenant has, whether before or after the commencement of this Act, built or acquired vacant possession of or been allotted, a residence reasonably sufficient for his requirements."

14. It is apparent that there must be a proof that the residence so allotted to the tenant is reasonably sufficient to meet his requirement. There is not even a word in the statement of the witnesses of the landlord that the accommodation allotted was reasonably sufficient to meet the requirements of the tenant. Though, the tenant has denied that he was allotted accommodation, keeping in view the evidence on record and the finding of both the Courts below which is a pure finding of fact, I am of the opinion that the landlord has proved that the tenant was allotted Government accommodation by his employer. However, in the statement of the witnesses of the landlord, there is not even a whisper that the said accommodation was reasonably sufficient for the requirement of the tenant. Even when the tenant appeared in the witness box, no question was put to him as to what was the extent of premises allotted to him. No suggestion was put to him that this accommodation was reasonably sufficient for his requirement. There is no material on record to show how the premises allotted to the tenant compared with the premises which are in his occupation. The landlord was required to at least lead some evidence in this regard.

15. Shri G.D.Verma has relied upon the judgment of the apex Court in **Dewan Chand Bhalla Vs. Dr.Ashok Kumar Bhoil,** 1994 (Suppl.) Sim. L.C. 418. I have gone through this judgment in detail. On perusal of this judgment, it is clear that the apex Court held that a tenant of a

residential building who has been allotted a residence reasonably sufficient for his requirements becomes liable for eviction. The apex Court no where laid down that even if the premises which are allotted to a tenant are not reasonably sufficient to meet his requirement, the tenant would still be liable for eviction. The first ground raised before the apex Court was that the residence which has been allotted to the appellant as government servant was not reasonably sufficient for his requirement. The apex Court held that the petitioner could not be permitted to raise this plea before the apex Court since there was a finding of fact of the courts below that the premises allotted to him were reasonably sufficient to meet his requirement. The relevant observations of the apex Court in this regard are as follow:

> "At the hearing of the appeal by us we did not permit the learned counsel for the appellant to address his arguments relating to rejection of first ground of resistance put forth by the appellant-tenant against the grant of respondent's application for eviction since the rejection of that ground was based on its factual finding that the residence allotted to him by the Government was reasonably sufficient for his requirements and that it was not a matter which could be permitted to be reagitated in an appeal by special leave under Article 136 of the Constitution."

16. The provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965 are similar to the provisions of the H.P. Act. A Division Bench of the Kerala High Court in

Kunhiraman Vs. Kumaran, 2004 (2) RCR 528 while dealing with a similar question raised before it held as follows:

> "……
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> …….The burden is on the landlord to prima facie show that the building acquired by the tenant and building subsequently Out up (sic) by the tenant is also reasonably sufficient for his requirement.
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> It is well settled canon of evidence that the point in issue is to be proved by the party who asserts the affirmative. It is settled law that in a suit for ejectment or a petition for eviction the burden of proof lies on the party who seeks eviction before the onus is shifted to the defendant or tenant to prove that he has a right to be continue in possession. In our view the landlord, the person who seeks an order of eviction has to show that the tenant has in his possession on the date of the filing of the petition a building reasonably sufficient for his requirement in the same city, town or village."

17. I am in respectful agreement with this proposition of law that the landlord must discharge the initial burden and must prima facie show that the building allotted to the tenant is reasonably sufficient to meet his requirement.

18. In view of the provisions of the Act, the landlord must not only prove that some accommodation has been allotted to the tenant but must also show that such residence is reasonably sufficient for the requirement of the tenant. This

has not been done in the present case. Therefore, in my opinion, the order of eviction could not have been passed.

19. In view of the above discussions, the revision petition is allowed and the order of the learned appellate authority is set aside.

No costs.

(Deepak Gupta),
Judge.

August 17,2006.
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